

# MONTHLY OPINION REPORT

## CALIFORNIA ATTORNEY GENERAL'S OFFICE



KAMALA D. HARRIS  
Attorney General  
NATHAN R. BARANKIN  
Chief Deputy Attorney General  
SUSAN DUNCAN LEE  
Supervising Deputy Attorney General

OPINION UNIT  
Anya M. Binsacca, Deputy  
Lawrence M. Daniels, Deputy  
Diane E. Eisenberg, Deputy  
Manuel M. Medeiros, Deputy  
Marc J. Nolan, Deputy  
Bruce M. Slavin, Deputy  
Stephanie Grimes, SSA



### OPINION UNIT

P. O. Box 944255

Sacramento, CA 94244-2550

(916) 324-5172

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The Attorney General's Opinion Unit is responsible for researching and drafting the formal opinions of the Attorney General. This Monthly Opinion Report lists all of the questions that are currently under consideration for formal opinions.

If you would like to give us your input on any of these questions, the Opinion Unit would be delighted to hear from you. The Attorney General welcomes and solicits the views of all interested persons concerning the legal issues raised in any question submitted for an opinion. Views should be in writing and directed to the deputy assigned to prepare the opinion. All views submitted before publication will be considered, but early submissions are greatly preferred. All submissions will be treated as public records subject to disclosure under the Public Records Act.

### QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING JUNE 2014

**14-401** requested by Siskiyou County Counsel Brian L. Morris concerning the following question:

May a person lawfully serve on the governing boards of both the Hornbrook Fire Protection District and the Hornbrook Community Services District? (Assigned to Deputy Attorney General Lawrence M. Daniels)

**14-403** requested by the Mendocino Acting County Counsel Douglas L. Losak concerning the following question:

What is the scope of intergovernmental immunity (Gov. Code §§ 53090-53091) where a city owns and leases real property in an unincorporated area of a county? (Assigned to Deputy Attorney General Diane E. Eisenberg)

**14-601** requested by the Inyo County Counsel Margaret Kemp-Williams concerning the following question:

May the same person serve as Inyo County Assessor and Bishop City Council member? (Assigned to Deputy Attorney General Marc J. Nolan)

### OPINIONS PENDING

- 09-301** May a county collect unpaid property taxes where, due to an error in the tax collection software, property owners who owe such taxes have not been notified of a delinquency, and, if so, how? (Eisenberg)
- 09-308\*** In any case in which a person is ordered to make victim restitution, and any portion of that restitution remains unsatisfied, are the courts prohibited from collecting court fines and fees unless they first apply those funds to pay the amounts ordered as restitution to the victim? In any case in which a person is ordered to make victim restitution, and any portion of that restitution remains unsatisfied, do the courts have the authority to collect victim restitution? (\*Reassigned to Daniels)
- 10-205** Is a regional Anti-Terrorism Approval Body, which has authority to allocate grant funds to local agencies, considered a “legislative body” for purposes of the Brown Act? (Carey)
- 10-502\*** Does Title 10 of the United States Code limit the State’s authority for fire protection on the California National Guard Base at Los Alamitos? (\*Reassigned to Binsacca)
- 11-201\*** Is a California charter school and its board or directors subject to: a) the Ralph M. Brown Act; or b) the California Public Records Act; or c) the Political Reform Act of 1974; or d) Government Code section 1090; or e) the review and inspection of books and records, by a Grand Jury formed pursuant to Penal Code section 888? (Most notably, the Grand Jury whose function it is to investigate and inquire into county functions of civil concern, *also see* Penal Code section 933.6.) (\*Reassigned to Medeiros)
- 11-705\*** May a court impose a probation condition on a DUI defendant to make a specified payment to the DUIRR Program? (\*Reassigned to Eisenberg)

- 11-707\*** Under the Emergency Medical Services Act, when are cities and counties required to enter into written agreements regarding local provision of emergency medical services? Does entering into such an agreement necessarily extinguish any pre-existing rights of obligations of a city? (Health and Safety Code § 1797.201.) (\*Reassigned to Daniels)
- 12-401** To facilitate compliance with *Brady v. Maryland*, may the California Highway Patrol lawfully release to the district attorney's office the names of officers who have sustained complaints of dishonesty or moral turpitude conduct, with no information other than the officer's name and date of earliest conduct, so that the district attorney may bring a *Pitchess/Brady* motion for in camera review of the officers' personnel files? Does Penal Code section 832.7, subdivision (a), authorize the district attorney to routinely review the personnel files of peace officers who will be prosecution witnesses? (Eisenberg)
- 12-409** Whether a private attorney acting as a contract city attorney can also act as 'bond counsel' for the same municipality and be paid based on a percentage of the bond sale without violating Government Code section 1090? (Binsacca)
- 12-902\*** When a special district appoints one of its own board members or staff to serve on an oversight board for the dissolution of a redevelopment agency, may the special district compensate its appointee for attending meetings notwithstanding Health and Safety Code section 34179(a), which states that 'oversight board members shall serve without compensation or reimbursement of expenses? (\*Reassigned to Slavin)
- 12-1203** May a former local agency employee serve on that same public agency's elected Board of Directors while still being carried on that agency's employee payroll solely for purposes of utilizing unused vacation leave remaining from his/her time as an active employee? (Eisenberg)
- 12-1204** Do the conflict-of-interest statutes that governed members of former redevelopment agencies apply to members of the successor agencies responsible for winding down their affairs and, if so, how? (Eisenberg)
- 13-202\*** Are the uniform standards developed by the Substance Abuse Coordination Committee for use by healing arts boards in dealing with their substance-abusing licensees valid, enforceable, and mandatory? (\*Reassigned to Slavin)
- 13-303\*** May a city purchase products or order services from a glass company partially owned by a member of the city council if that member disqualifies herself from any influence or participation in the purchasing or ordering decision? (\*Reassigned to Binsacca)

- 13-304** In connection with a school or community college bond measure, does a district violate state law by contracting with a bond underwriter for both pre-election campaign services and post-election underwriting services? (Medeiros)
- 13-403\*** Does Proposition 26 require that prior to a County Board of Supervisors enacting an ordinance requiring a cable television company to pay to the County a PEG (public, educational, and governmental access) fee equal to one percent (1%) of the gross revenues under the Digital Infrastructure and Video Competition Act ('DIVCA'), the voters must first approve the imposition of such a fee? (\*Reassigned to Binsacca)
- 13-702** Does an incoming member to the Board of Trustees of the Los Angeles Community College District have a conflict of interest due to his spouse's employment as a faculty member with the district, and is he thereby precluded from participating in or voting on specific issues? (Daniels)
- 13-901** Are reverse cellular phone kiosks "secondhand dealers" within the meaning of Business and Professions Code section 21626? (Binsacca)
- 13-903** Does Government Code section 1090 prohibit a city agency from utilizing the services of a public relations firm that occasionally retains the services of a city council member for its non-city clients? (Slavin)
- 13-904** Does state law preempt a local ordinance that would require dentists in that jurisdiction to provide their patients with a Dental Materials Fact Sheet and Statement of Rights before performing specified procedures? (Eisenberg)
- 13-1101** May a county clerk charge the district attorney's office for certified court records? (Medeiros)
- 13-1201** If a school superintendent's contract allows the superintendent to receive cash in lieu of medical benefits, may the school board members receive an equivalent sum in a whole life insurance policy in lieu of medical benefits? (Slavin)
- 13-1202** Are medical assistants legally permitted to perform basic pulmonary function testing, such as spirometry? (Daniels)
- 13-1203** May health care professionals offer online discounts for their services through a third-party internet marketer? (Medeiros)
- 14-101** May non-attorneys represent parties before the Office of Administrative Hearings? (Medeiros)
- 14-202** May the "premium" generated from a school district bond sale be used to pay for expenses of issuance and other transaction costs? (Slavin)
- 14-301** May an attorney who sits on a city council represent clients with interests adverse to that city? (Slavin)

- 14-302** Under the Brown Act open meetings law, may a community college board of trustees meet in closed session to discuss and negotiate the terms of a project labor agreement? (Daniels)
- 14-304** Under state law, may local authorities restrict parking on public streets to those persons issued residential parking permits? (Slavin)
- 14-401** May a person lawfully serve on the governing boards of both the Hornbrook Fire Protection District and the Hornbrook Community Services District? (Daniels)
- 14-403** What is the scope of intergovernmental immunity (Gov. Code §§ 53090-53091) where a city owns and leases real property in an unincorporated area of a county? (Eisenberg)
- 14-601** May the same person serve as Inyo County Assessor and Bishop City Council member? (Nolan)

#### **CONCLUSIONS OF OPINIONS ISSUED IN JUNE 2014**

**13-1102—June 6, 2014—1.** Federal law has authorized the California Industrial Hemp Act to the extent that it permits institutions of higher education and the California Department of Food and Agriculture to grow and cultivate industrial hemp, for the purposes of agricultural or academic research, in compliance with the federal definition of industrial hemp. These same entities may also conduct agricultural pilot programs to study the growth, cultivation, or marketing of industrial hemp, provided that such programs are conducted in a manner that (1) ensures that only institutions of higher education and the California Department of Food and Agriculture are used to grow or cultivate industrial hemp; (2) requires that sites used for growing or cultivating industrial hemp in California be certified by, and registered with, the California Department of Food and Agriculture; and (3) authorizes the California Department of Food and Agriculture to promulgate regulations to carry out the pilot program in accordance with the purposes of section 7606 of the federal Agricultural Act of 2014.

2. Federal law authorized, and rendered operative, the relevant portions of the California Industrial Hemp Farming Act on February 7, 2014.

3. Federal law imposes limitations that are inconsistent with the provisions of the California Industrial Hemp Farming Act in that: (1) it continues to prohibit the cultivation of industrial hemp for purposes other than agricultural or academic research; (2) it restricts those persons or entities who may cultivate industrial hemp for agricultural or academic research to the California Department of Food and Agriculture or an institution of higher education; (3) it prevents even these authorized entities from instituting an agricultural pilot program to study the growth, cultivation, or marketing of industrial hemp, unless the program is conducted in compliance with additional federal

requirements set forth in section 7606(b)(1)(B) of the federal Agricultural Act of 2014; and (4) it prohibits, even for research purposes, the cultivation or possession of the parts of the plant *Cannabis sativa* L. that exceed a 0.3% concentration of tetrahydrocannabinol (THC). In general, provisions of the California Industrial Hemp Farming Act are inoperative to the extent that they apply or pertain to any form of industrial hemp cultivation not authorized by federal law.

### **OPINIONS CANCELLED IN JUNE 2014**

13-306 Answered by Letter 6/25/14

The deputies assigned to the questions submitted can be reached at the following addresses and telephone numbers:

Anya M. Binsacca: Anya.Binsacca@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5713.

Lawrence M. Daniels: Larry.Daniels@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 897-2288.

Diane E. Eisenberg: Diane.Eisenberg@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-1821.

Susan Duncan Lee: Susan.Lee@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5876.

Manuel M. Medeiros: Manuel.Medeiros@doj.ca.gov; P. O. Box 944255, Sacramento, CA 94244-2550; (916) 323-1996.

Marc J. Nolan: Marc.Nolan@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 897-2255.

Bruce M. Slavin: Bruce.Slavin@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5971.